

The United States Military's Role in Combating Transnational Organized Crime

by

Lieutenant Colonel Gerald A. Boston
United States Army



United States Army War College
Class of 2013

DISTRIBUTION STATEMENT: A

Approved for Public Release
Distribution is Unlimited

This manuscript is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
<p>The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.</p>					
1. REPORT DATE (DD-MM-YYYY) xx-03-2013		2. REPORT TYPE STRATEGY RESEARCH PROJECT		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE The United States Military's Role in Combating Transnational Organized Crime				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Lieutenant Colonel Gerald A. Boston United States Army				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Colonel Gregory G. Woods Department of National Security and Strategy				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Approved for Public Release. Distribution is Unlimited.					
13. SUPPLEMENTARY NOTES Word Count: 6,852					
14. ABSTRACT This analysis looks at United States policy towards countering transnational organized crime and targeting transnational criminal networks that pose a clear and present danger to the United States, its allies, or key partner states. Using the President's Strategy to Combat Transnational Organized Crime, published in July 2011, the analysis focuses and defines how the elements of United States national power, in a whole of government construct, can effectively defend American citizens and United States enduring national security interests from the convergence of twenty first century transnational criminal threats and violent extremism. From this analysis, policy and associated authority gaps are identified and policy implementation recommendations made to address these gaps. Ultimately, this research informs and enables Geographic Combatant Commands to better execute their key roles and missions associated with to combating transnational organized crime in their area of operations.					
15. SUBJECT TERMS Security Assistance, Legislative Authorities, Transnational Crime, Violent Extremism					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UU	18. NUMBER OF PAGES 38	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UU	b. ABSTRACT UU	c. THIS PAGE UU			19b. TELEPHONE NUMBER (Include area code)

USAWC STRATEGY RESEARCH PROJECT

**The United States Military's Role in
Combating Transnational Organized Crime**

by

Lieutenant Colonel Gerald A. Boston
United States Army

Colonel Gregory G. Woods
Department of National Security and Strategy
Project Adviser

This manuscript is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

Abstract

Title: The United States Military's Role in
Combating Transnational Organized Crime

Report Date: March 2013

Page Count: 38

Word Count: 6,852

Key Terms: Security Assistance, Legislative Authorities, Transnational Crime,
Violent Extremism

Classification: Unclassified

This analysis looks at United States policy towards countering transnational organized crime and targeting transnational criminal networks that pose a clear and present danger to the United States, its allies, or key partner states. Using the President's Strategy to Combat Transnational Organized Crime, published in July 2011, the analysis focuses and defines how the elements of United States national power, in a whole of government construct, can effectively defend American citizens and United States enduring national security interests from the convergence of twenty first century transnational criminal threats and violent extremism.

The United States Military's Role in Combating Transnational Organized Crime

Transnational criminal threats and illicit trafficking networks continue to expand dramatically in size, scope, and influence—posing significant national security challenges for the United States and our partner countries. These threats cross borders and continents and undermine the stability of nations.

— United States National Security Strategy, May 2010

The international system has profoundly changed during the professional lives of most of today's security practitioners and policymakers. Beginning after the Second World War, and accelerating through the first decade of the Twenty First Century, the international systems of diplomacy, information, cooperative security, and economics fundamentally changed and have become progressively more globalized.¹ These changes may not be permanent, but almost no one expects the strategic environment to remain stagnant. Fueled by increasing multi functional and cross cultural interdependence, it is clear that the disintermediation of economic resources and information systems, the transformation in trade, commerce, societal norms, security, and technology all contribute to both cause and effect in an international system moving towards increased globalism. Concurrent with these developments has been the "parallel globalization of organized crime, violence, murder, and kidnappings related to illicit trafficking."² Transnational organized crime (TOC) has evolved into a capricious and potentially destabilizing menace to the personal security of ordinary citizens as well as to regional security in key parts of the world, and to the sovereignty of some at-risk partner states.³ The risks of TOC go beyond international borders and challenge the stability, sovereignty, and legitimacy of important United States partner states.

Transnational criminal organizations (TCO) try to leverage weaknesses in both the structure and effectiveness of government institutions in at-risk states in order to build up enormous capital and sway through trafficking and other unlawful actions. Some of these organizations have extended networks that have fully compromised “lawful financial systems and institutions in order to undercut commercial markets.”⁴ In fragile and at-risk states, these networks increase their “influence via cartels that subvert or co-opt government officials and some state security apparatuses.”⁵ The *confluence* of TCO and violent extremist organizations (VEO) is one of ways and means rather than ends and objectives. This potentiality for confluence is important in that TCO and VEO will use similar methods, tactics, techniques, and procedures, but their motivations and goals are seen as distinct. This confluence represents a grave threat as “violent extremists seek to use existing criminal networks for logistical support and funding.”⁶ As vulnerable states are compromised and governmental infrastructure suborned, the more sophisticated crime networks have added cyber crime to their portfolios. These activities can cost consumers and businesses billions of dollars annually, “while undermining global confidence in the international financial system”⁷ and the security sector of many partner states.

The very transnational nature of modern organized crime cartels presents a considerable and mounting danger to both national and international security, “with dire implications for public safety, public health, democratic institutions, and economic stability across the globe.”⁸ As criminal networks get bigger, they broaden their portfolios and aggressively branch out their activities to reduce exposure to specific parts of the enterprise and obfuscate the financial forensics. This diversity has given

rise to a “convergence of threats that were once distinct and today have explosive and destabilizing effects.”⁹ The President’s Strategy to Combat Transnational Organized Crime, published in July 2011, attempts to focus and define how the elements of United States national power, in a whole of government construct, can best defend American citizens and United States national security interests from the convergence of twenty first century transnational criminal threats.¹⁰ The stated purpose of the strategy is to better organize the resources available to the United States Government in order to combat those TCO and networks “that pose a strategic threat”¹¹ to American citizens and United States interests in key regions.

Not all TOC organizations and networks are created equal and not all pose a clear and present threat to the United States, its allies, or key partner states. United States law enforcement agencies in the lead and in conjunction with partner state law enforcement agencies are the main effort in combating TOC. The high payoff activity for the military instrument, in addition to counter terrorism activities, is to focus on those *confluent actions between TOC organizations and violent extremist networks (VEN)*. The most significant convergence that can be impacted by military activity is illicit trafficking and enabling partner nation sovereignty over their physical domains. However, even in a *converging* threat environment, the ability of the United States military to act in support of law enforcement agencies is heavily prescribed by public law and implementing policy from the Department of Defense and the National Security Staff. The result is a regionally subjective and improvised arrangement where Geographic Combatant Commands (GCC) work to integrate military capabilities into a whole of government effort with unpredictable results.

General Framework

This analysis will look at United States policy towards countering TOC and targeting transnational criminal networks (TCN) that pose a clear and present danger to the United States, its allies, or key partner states. This paper will ascertain if the Department of Defense has the appropriate authorities to execute its responsibilities in support of the President's 2011 Strategy to Combat Transnational Organized Crime.

The research will first examine the dangers, risks, and opportunities associated with the convergence of TOC and violent extremism organizations in terms of their ways and means. This high pay-off convergence may represent a key opportunity for the United States Government to exploit in order to help achieve the President's overall Strategy to Combat Transnational Organized Crime.

Using this high payoff convergence as a framework, the research will then analyze United States' espoused interests, relevant strategies, and legislative authorities to extrapolate a clear understanding of current Department of Defense authorities to combat TOC within a whole of government construct.

From this examination, the research will identify those critical areas where Department of Defense, GCC, and the Joint Force have specific operational capability but no current authorities to execute train and equip, advise and assist, or other security cooperation¹² tasks with partner state law enforcement agencies.

From this analysis, policy and associated authority gaps will be identified and make specific policy implementation recommendations to address these gaps. Ultimately, this research will inform and empower GCC to better execute their key roles and missions associated with to combating TOC in their area of operations.

Background

The United States Military derives their legitimacy of action from the American people as manifested in the United States Constitution. The Department of Defense specifically relies on Congressionally-assigned authorities and applicable Executive Orders to define, limit and authorize its global activities and has a fiduciary responsibility to the American People for their defense. In order to be proactive and thorough in this responsibility, the department must keep its civilian leadership informed of all aspects of its operations, to include any extant gaps in authorities required to accomplish assigned missions. GCC work regionally, across the globe to defend the United States and its interests, foster regional security, and serve as an enduring partner of choice in support of peaceful and prosperous regional partners. This requires clear guidance and well defined authorities. The GCC routinely conduct counter-terrorism operations, counter-drug operations, counter-illicit trafficking operations, and combat TOC in a joint, interagency, international and multilateral environment and in support of United States strategic interests. Among these activities, combating TOC has emerged as a high payoff mission that focuses on distributed TCN that have the potential to converge ways and means with violent extremism.

Current security cooperation, security force assistance,¹³ and security assistance¹⁴ activities authorized for steady-state and phase zero shaping operations are designed to contribute towards United States strategic objectives by “shaping perceptions and influencing the behavior of adversaries and partner nations, developing partner nation and friendly military capabilities for self-defense and multinational operations, improving information exchange and intelligence sharing.”¹⁵ Within the strategic shaping and phase zero rubric the Department of Defense is currently

authorized to *train and equip* partner nation military forces and, under certain conditions, partner nation law enforcement entities where the partner nation in question has dual-use forces for both counter terrorism and law enforcement.¹⁶ The President has directed a strategic approach to combating TOC and established it as a focused effort for the executive branch of government.

The Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security published in July 2011 identifies TOC and the related corrosion of state institutions as major concerns for state security planners and policy experts. It defines TOC as:

Those self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary. Transnational organized criminals act conspiratorially in their criminal activities and possess certain characteristics which may include, but are not limited to:

1. In at least part of their activities they commit violence or other acts which are likely to intimidate, or make actual or implicit threats to do so;
2. They exploit differences between countries to further their objectives, enriching their organization, expanding its power, and/or avoiding detection/apprehension;
3. They attempt to gain influence in government, politics, and commerce through corrupt as well as legitimate means;
4. They have economic gain as their primary goal, not only from patently illegal activities but also from investment in legitimate businesses; and
5. They attempt to insulate both their leadership and membership from detection, sanction, and/or prosecution through their organizational structure.¹⁷

The Department of Defense is a supporting effort in the United States Government's efforts to combat TOC. The strategic imperatives of safeguarding private citizens, breaking the financial strength of criminal and terrorist networks, disrupting illicit trafficking networks, defeating TCO, fighting government corruption, strengthening the rule of law, bolstering judicial systems, and improving transparency are not exclusively, or even principally, the purview of the military instrument.¹⁸ In an area of ambiguous guidance, the Geographic and Functional Combatant Commands are relying on a less than optimal assortment of extemporized measures to integrate their efforts into the United States whole of government effort. This ad-hoc policy without fiscal authority may not be successful in promoting unity of effort, better sequencing of operations, synchronized security cooperation, and other initiatives with adjacent GCC, the Department of State, the Drug Enforcement Administration, the United States agency for International Development, and the Department of Homeland Security.

The complexity and violent behavior of TCO has become so endemic that in some parts of the world the United States military is training not only partner state law enforcement services and paramilitary organizations, but their militarily counterparts as well. In many parts of the world and especially in Latin America the United States has built a network of costly equipment, detection equipment, aircraft, maritime interdiction assets, cooperative security locations, and command and control nodes to counter trafficking and enhance partner state sovereignty over their land, air and maritime domains.

Of particular challenge is the institutional weakness of some partner state police, law enforcement services, judicial, penal, and in some cases the state's entire security

sector. Some law enforcement enterprises are so foundationally fragile or corrupt that a few partner state governments are resorting to using their military instrument to counter TCN, sometimes with violent outcomes. Military formations organized, trained, and equipped for combat, even when focused on internal security, can prove cumbersome in a law enforcement role. A few partner nation governments have little choice but to resort to dual-use or military formations due to fiscal constraints and perceived legitimacy issues within the civilian security sector.

A current and very illustrative model for applying the United States military against TCO in a whole of government context is Plan Colombia. Recognizing that violent extremism and the illicit trafficking of narcotics in Colombia are fully converged, the United States Congress granted innovative and enhanced legislative authorities in 2002 making United States assistance to Colombia more flexible in order to better support Colombia's integrated effort against TCN and violent extremism. The United States government committed its resources to a holistic whole of government plan that mitigated and reduced interagency myopia on a particular aspect of the problem. Department of Defense forces were permitted to work hand in hand with United States law enforcement and diplomatic efforts to professionalize Colombian security forces in the counterterrorism and counternarcotics mission sets. The authority to train, equip, advise, and assist has no artificial barrier based on domestic United States budget authorities. In this specific instance the military was able to contribute to Colombian stability and reconstruction beyond its principle counternarcotics role of monitoring and detection.

Partner state militaries are engaged in numerous regions of the world where there is a convergence between transnational crime and violent extremism. Separately from the formerly referred to Colombian case, the Peruvian military battled the Shining Path (Sendero Luminoso) that gleaned considerable revenues from narcotics trafficking. In Sri Lanka, the military has fought the Tamil Tigers who derive significant revenues from the drug trade. The Turkish military continues its struggle against the Kurdistan Workers Party (PKK) that is in turn supported by the drug trade, human, cigarette and arms trafficking. In short there are several examples of military action directed at TNC enabled VEO that are ongoing or have succeeded.¹⁹

Analysis of the Convergence of Transnational Organized Crime and Violent Extremism Organizations

Security experts are increasingly concerned that their analysis of violent extremism and VEN show consistent convergence with and subversion of transnational criminal enterprises. Recent focus is turning to the analysis of VEO in terms of how their networks and enterprises intersect and diverge with TOC organizations and networks. Illuminating these associations is fundamental to putting the current turbulence in global politics into context. The relationships between these two entities point to the notion that although transnational organized criminal organizations and VEO will use similar tactics techniques and procedures; they are essentially striving for paradoxical goals. Crime is first and foremost an economically motivated endeavor, while violent extremism is firmly oriented towards political, racially prejudiced, xenophobic, or quasi-religious ends. A study funded by the Department of Justice on the subject affirmed that:

...the differences between the two are plentiful: terrorists pursue political or religious objectives through overt violence against civilians and military targets. They turn to crime for the money they need to survive and operate. Criminal groups, on the other hand, are focused on making

money. Any use of violence tends to be concealed, and is generally focused on tactical goals such as intimidating witnesses, eliminating competitors or obstructing investigators.²⁰

Security experts have not yet settled on the substance, scope, and functionality of enduring alliances or convergence between TOC networks and VEO. However, the relationship between the two is not stagnant and can be seen as a convergence that under certain conditions might result in the merger of objectives and goals. “The result is a model known as the terror-crime interaction spectrum that depicts the relationship between terror and criminal groups and the different forms it takes.”²¹ Contained by the spectrum there are mechanisms that the Department of Justice study refers to as “activity appropriation, nexus, symbiotic relationship, hybrid, and transformation.” These stages exemplify the diverse forms of interface between a VEO and a TOC enterprise, as well as the behavior of any one network that is engaged in both violent extremism and organized criminal activity.²²

As we enter the second decade of the twenty-first century it is evident that TOC is on the increase and its array of enterprises and networks are a considerable issue for a globalized world and an existential menace to vulnerable states in the international system. The opportunity for expansion of TOC enterprises are expected to continue because of the larger worldwide trend towards the commoditization of goods, services, and people, as well as the increasing economic disparity between urbanized or developed polities and emergent states. Combined with the relative increase in regional conflicts, the challenges to border security and sovereignty, and the continuation of extraction based economic models that limit or hinder local equity there are an abundance of opportunities where politically motivated violent extremists and

transnational criminal enterprises can use globalization to exploit common methods and techniques.²³

TOC and violent extremism are increasingly in temporal and physical proximity. This proximity will increase understanding within TCN realize that there is a profit margin in providing technical and logistical support for violent extremists. It will therefore become in their interests to provide an obscurant function for VEN against their local and regional law enforcement agencies and security sector. Disrupting the support and quasi-operational connections between TCO and VEO has been given only insufficient consideration in the United States. The separation of the two phenomena allows for both VEO and TCO to grow and leverage each other's strengths.²⁴

Activity appropriation takes place when VEN and TOC implement the other's tactics, techniques, and procedures exclusive of actual unity of effort or combined activities. To increase operating capital, violent extremists have "habitually turn to credit card fraud, drug dealing, money laundering, and smuggling, the staple activities of organized criminals."²⁵ Using the tools of the criminal is initially an expedient and an acknowledgement of best practices for extralegal activities. However, activity appropriation does not always lead to the next stage on the terror-crime interaction spectrum or a *nexus* paradigm. Stagnation on the terror-crime interaction spectrum can happen when a violent extremist group sees no benefit in including outsiders in their activities or when no transnational criminal group is willing to endanger profits and draw attention to its enterprise by working with violent extremists.

However, if activity appropriation is occurring it follows that protracted contact or proximity between the criminals and violent extremists are likely. As violent extremists

“attempt to acquire forged documents, launder money, or pay bribes, it is a natural step to draw on the support and expertise of the criminal group, which is likely to have more experience in these activities.”²⁶ This typically manifests itself by the transnational criminals providing goods and services to violent extremists for cash or payment in kind. These transactional relationships do not imply any convergence of ideology or goals, but acknowledges a *nexus* of interests. Both have need of armaments, safe houses, documentation, transport, secure communications, and real time visibility on law enforcement activities. To leverage economies of scale, efficiency, and shared proficiency the *nexus* association must serve both group’s objectives.

If the *nexus* described above proves mutually beneficial, the affiliation may expand. As familiarity and trust grow, the groups may “create structures and procedures for their business transactions, transfer skills and/or share best practices.”²⁷ This new relationship is a *symbiotic relationship* characterized by reciprocal advantage and a degree of shared reliance. Comparatively few violent extremist and transnational criminal *nexus* relationships will ever transition to a *symbiotic relationship*. For example the liaison between the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia or FARC) and cocaine-based transnational criminal enterprises being the most prominent case in point of a *symbiotic relationship*. However, the available literature does not suggest that further development into a *hybrid* organization that shares goals and dogma is inevitable or even probable.

The final merger of transnational crime and violent extremism into a *hybrid* organization is almost wholly dependent on continuous and successful exposure to a wide range of mutually beneficial operations that can lead to the next stage of

collaboration. It is clear that “a group may persist with borrowed methods indefinitely without ever progressing to cooperation”²⁸ or becoming a merged *hybrid* organization. In many parts of the world, VEN engaged in terrorism never progressed past the *activity appropriation* phase of the terror-crime interaction spectrum. While this model is useful in describing the range of possible crime and violent extremist interaction, it does not prescribe a predetermined or predictive development scheme. The specific situation and associated issues outside the control of either violent extremists or transnational criminals and the wide-ranging necessities of specific networks contribute decisively to the peculiar nature of their relations. Generalized trends and discernible societal norms play less a role than does the nature or legitimacy of the state’s security sector and its relationship with the population and their perceived opportunities for economic development.

Security policy writers and practitioners alike are paying increasing consideration to how malicious non-state actors like VEN and TCN challenge vulnerable states and otherwise threaten the fabric of at risk societies. Identification and prioritization of vulnerable states is a philosophical change in how we interact with the strategic environment. No longer are we constrained to looking at our environment in terms of cold war necessity or even a single peer or near peer state. Military access and countering Soviet Union influence “drove United States security cooperation activities and security assistance programs.”²⁹ At a time when the specter of nuclear destruction has receded, the ungoverned or under governed areas of the world in concert with economic uncertainty and outright privation have engendered a pervasive sense of insecurity and vulnerability to large populations and polities.

TOC has thrived in conflict regions and some post conflict situations. Peacekeeping and stabilization activities by the international community tend to target the political and security concerns that initiated the conflict or caused it to become part of the international narrative, but not the TCO activities that contributes to its continuance.³⁰ Within a much larger context, transnational criminality is more apt to flourish “in a large shadow economy, that is, where illicit, unregulated, undeclared, and illegal transactions take place and where there is little legitimate economy.”³¹ Conflict zones offer occasions for a wide variety of illicit activities in an environment where much of the administration, regulation, and enforcement capacity of the state are focused on military targets. Conflict states are particularly exposed to both TCN and violent extremism that are dedicated towards exploiting the population for both economic and political ends. The conflict and immediate post conflict environments provide unique opportunities for “cooperation between those engaging in pure criminal activities and those engaging in politically-motivated violence”³² until such time as enforcement and regulatory capacities are reestablished. In fact, the previously cited Department of Justice funded study focused on specific geopolitical environments and features that may give rise to or sustain activities along the terror-crime interaction spectrum. It summarizes the following conditions as relevant:

Regions where the central state has lost control over some of its territory.

Regions straddling several national borders or jurisdictions.

Conflict zones where separatists are fighting government forces.

Areas of countries that otherwise have a strong rule of law, but weak control over certain neighborhoods and slums, such as certain emigrant or refugee neighborhoods of major cities.

Penal institutions where correctional authorities are more concerned with maintaining order rather than probing the crime-terrorist interactions within their institutions.³³

As the 2002 National Security Strategy cautions, “America is now threatened less by conquering states than we are by failing ones,”³⁴ What has developed from the challenges associated with vulnerable states are evolved forms of illicit activity that goes beyond conventional notions of criminality and terrorism. Vulnerable states have an assortment of complex problems. Most conspicuous is their insufficient capacity to exercise effective sovereignty of their physical domains, the loss of the exclusive right to use deadly force to maintain order or achieve ends, and the inability or disinclination of the state to shield the population from harm. These conditions then engender a lack of state legitimacy, the inability to provide basic social services, and the failure to function responsibly in the international system.³⁵

As recent history has established, the penalty of not addressing the threat posed by TOC subverting vulnerable states is real. As discussed above, the conditions that make a state vulnerable are similar to those needed for both violent extremism and criminal networks to succeed. Although transnational crime requires some state sponsored infrastructure and stability to thrive in the long run, both can reap short term gains from safe haven within the borders of a weak state and strength within the disorder of societal collapse.

National Interests, Strategies, and Legislative Authorities

The 2010 National Security Strategy espouses the principle that the United States will position itself “to champion mutual interests among nations and peoples.”³⁶ It further defines the United States’ enduring interests as:

Security: The security of the United States, its citizens, and U.S. allies and partners.

Prosperity: A strong, innovative, and growing U.S. economy in an open international economic system that promotes opportunity and prosperity.

Values: Respect for universal values at home and around the world.

International Order: An international order advanced by U.S. leadership that promotes peace, security, and opportunity through stronger cooperation to meet global challenges.³⁷

Within this framework of enduring national interests, the need to sustain an International Order is primary in that it “will support our efforts to advance security, prosperity, and universal values, but it is also an end that we seek in its own right.”³⁸ The specter of TCO and violent extremism are major threats to a sustainable International Order. From these interests and the National Security Strategy it is reasonable to extrapolate that the policy of the United States to meet these challenges is to “formulate and implement a cooperative strategy with partner states confronting the same threats and challenges.”³⁹

Combating transnational organized criminal enterprises in a globalized environment entails an integrated and wide-ranging whole of government effort. The President’s Strategy to Combat Transnational Organized Crime attempts such an approach, but in reality it does little more than serve as a glossy unclassified brochure to increase worldwide understanding about TOC. However, it does provide some specific “policy objectives” which are enumerated below.

1. Protect Americans and our partners from the harm, violence, and exploitation of transnational criminal networks.
2. Help partner countries strengthen governance and transparency, break the corruptive power of transnational criminal networks, and sever state-crime alliances.

3. Break the economic power of transnational criminal networks and protect strategic markets and the U.S. financial system from TOC penetration and abuse.
4. Defeat transnational criminal networks that pose the greatest threat to national security by targeting their infrastructures, depriving them of their enabling means, and preventing the criminal facilitation of terrorist activities.
5. Build international consensus, multilateral cooperation, and public-private partnerships to defeat transnational organized crime.⁴⁰

The strategy directs the Interagency Policy Committee on Illicit Drugs and Transnational Criminal Threats from the National Security Staff and the Office of National Drug Control Policy to devise implementation options within a whole of government context to address the policy objectives articulated above. The strategy further identifies fifty-six separate “priority actions” as ways to achieve the policy objectives (ends) without actually prioritizing the actions, establishing an executive authority framework, or describing the resources (means) required.

The President of the United States is the chief executive, head of state, head of government, and Commander in Chief of the Armed Forces and is responsible under the United States Constitution to ensure that the laws of the United States are faithfully executed.⁴¹ The United States Congress is the source of federal legislative authority and is responsible for enacting the laws and authorities for the control of the United States Military.⁴² Congress, through the Posse Comitatus Act, has prohibited use of the United States Armed Forces⁴³ to carry out the responsibilities of civilian government in this country except where expressly permitted by statute or the Constitution.⁴⁴ The spectrum of transnational criminal activities countering illicit trafficking (CIT), counternarcotics (CN) enforcement and counter weapons of mass destruction (CWMD) are perhaps the most well considered area for Department of Defense capabilities and activities. The

United States Congress has authorized various exceptions to the Posse Comitatus Act that gives consent to the military, in specific situations, to support and assist United States civilian law enforcement agencies in enforcing the laws of the United States.

The most common example of congressional consent is in the area of counterdrug assistance where Title 10 United States Code (USC), Chapter 18, Sections 371-382 grant specific authorities for the use of the United States Military to support civilian law enforcement agencies. The Secretary of Defense has clear-cut legislative authority to authorize support to federal, state and local law enforcement agencies within the CN/CIT portfolio so long as there are no adverse effects on military readiness and military personnel are not used for searches or arrests. The secretary may further authorize the sharing of intelligence gathered in purely military operations, contributing military equipment and facilities, and provide training and advice on the employment and maintenance of military equipment. If the Attorney General and the Secretary of Defense mutually conclude that an urgent situation exists concerning weapons of mass destruction, the Department of Defense may provide assets and personnel to support civil authorities wherever such support is required for the enforcement of applicable United States laws that prohibit the possession and employment of biological, chemical or nuclear weapons. Specifically within the CWMD portfolio, United States Military personnel may not arrest suspects, participate directly in searches or seizures, or take part in intelligence collection for law enforcement purposes.

From 1991 to 2013 the United States Congress has used the annual National Defense Authorization Acts to alternately make available or withdraw authorities and permissions for the Department of Defense in terms of the TOC/VEO portfolio.⁴⁵

Analysis of the acts shows the reluctance to allow Defense resources and activities to become pooled with those of other departments of the executive branch. This legislative theme shows a uniquely stove-piped approach that seems to be geared more towards oversight (a legitimate legislative function) rather than synchronization and unity of effort. Other than Plan Colombia, the United States Government has failed to produce a truly comprehensive set of authorities that are linked to appropriations and a strategic level operational design.

Other authorities include:

- Title 10 USC, section 124 has authorities that make the Department of Defense the lead United States agency responsible for detecting and monitoring illegal narcotics entering the United States by air or sea, but does not allow for the proviso of direct assistance to United States or partner state law enforcement agencies.
- Title 32 USC, Chapter 1, Section 112 authorizes the Department of Defense to pay for state National Guard missions in support of approved drug interdiction and counter-drug activities (to include detection and monitoring) so long as the personnel involved are not in Federal service and acting exclusively under the authority of Title 32 USC.

As mentioned above all security cooperation, security force assistance, and security assistance activities with partner state military forces falls under the jurisdiction of the respective Geographic Combatant Command. It is important to remember that all Department of Defense activities by, with, and through a partner state military force are executed at the country level through the GCC's "security assistance officer, who is a

member of the Country Team working for the U.S. Ambassador.”⁴⁶ When well coordinated, security assistance actions are synchronized with other United States Government measures at the National Security Staff level where the State Department and the Office of the Secretary of Defense receive priorities and guidance. This guidance prioritizes United States Government objectives in terms of the National Security Strategy and “in turn drives the military’s theater campaign plans and Embassies’ mission strategic plans.”⁴⁷ Ambassadors or chiefs of mission are at the vanguard of security assistance. The United States Ambassador has unqualified authority over all United States Government personnel and activities in their respective partner state, “which means that all military programs are subject to ambassadorial approval and are critical to promoting U.S. objectives in a particular country.”⁴⁸

The governmental authorities for security assistance programs principally exist in the Department of State, but the Department of Defense has the competence and knowledge to put into practice military assistance programs. Generally financed under Title 22 USC, the international assistance budget finances foreign military financing, International Military Education and Training, international narcotics control and law enforcement, and peacekeeping operations.⁴⁹ However, none of the authorities described above permit the United States Military to advise or assist partner nation dual use forces or law enforcement agencies outside of Plan Colombia or named conflict zones in Iraq and Afghanistan.

Capability and Authorities Gaps

Other than named operations such as Operation Iraqi Freedom⁵⁰, Operation Enduring Freedom⁵¹ and Plan Colombia⁵² the support permitted by the Department of Defense is widely limited to *training and equipping* partner nation dual-use military

formations. Outside of these named operations, the authority to *advise and assist* dual-use forces does not exist in enough quantity or fidelity to allow GCC to adequately address partner nation capability gaps in respect to law enforcement and counter terrorism. Validating the need to address the capability gap for the GCC is currently mired in the national security staff that has not yet provided implementation guidance or a legislative agenda to expand Department of Defense Authorities.⁵³ Current authorities do not permit the Department of defense to advise or assist partner nation law enforcement⁵⁴ organizations in the actual planning and execution of end-game law enforcement operations⁵⁵ against TCN targets.

Almost two years after the publication of the Strategy to Combat Transnational Organized Crime, the Interagency Policy Committee on Illicit Drugs and Transnational Criminal Threats from the National Security Staff and the Office of National Drug Control Policy have yet to devise cohesive implementation guidance. The imbalance of ends, ways, and means in strategy (unless corrected in implementation policy) is inducing risk in to the system and will have deleterious effects on other actions within this portfolio.

Implementation Policy Recommendations

When approved, the implementation policy should have several basic characteristics to enable success. The first is that the fifty-six “priority actions” in the Strategy to Combat Transnational Organized Crime need to be clearly divided into functional and regional categories. The implementation guidance must be made immediately releasable to key partners. The Office of National Intelligence should, via executive order, make releasable (at a minimum to Great Britain, Australia, Canada, and New Zealand) the implementation guidance for the strategy. The actions then need to be prioritized within these two categories and assigned a lead agency with executive

authority⁵⁶ within the United States Government. In support of functional actions, the lead agency could be a myriad of different agencies within the executive branch that could coordinate effort and sequence effects within specific portfolios. For regional actions, a regional bureau at Department of State or a GCC, in conjunction with associated country teams, should synchronize actions. Finally the National Security Council (principals) should approve the implementation guidance and set timelines for legislative proposals that leverage existing authorities for counter terrorism, counter narcotics and CWMD and identify specific authorities for those actions that cannot be achieved via executive order.

Specific functional actions should include;

- Targeting transnational organized criminal funds.
- Intelligence sharing with respect to transnational criminal financing.
- Target links between TCN and cyber attacks in partner nation and domestic financial systems.
- Target TCN authorized by legitimate governments.
- Target TCN that are complicit or enable weapons of mass destruction proliferation networks.
- Target credit card fraud, drug dealing, money laundering, and illicit trafficking activities suspected of supporting both TCN and VEO (*activity appropriation*).
- Target transnational criminals providing goods and services to violent extremists for cash or payment in kind (*nexus*).

- Identify transnational criminals that have structures and procedures for their business transactions that have the potential of being co-opted by violent extremists (*symbiotic relationships*).
- Work with partners and multilateral organizations to restrict the finances and travel of suspected transnational criminals.
- Establish an intelligence collection plan within the Office of National Intelligence that enhances collection and analysis of the transnational organized criminal and violent extremism convergence.

Specific regional actions should include:

- Focus on all forms of illicit trafficking between the United States and Mexico, the Caribbean Basin, and Central America.
- Increase efforts to promote rule of law, legitimate sovereignty, law enforcement, and financial regulatory capacity in global criminal support zones.
- Focus on those regions where the central state has lost control over some of its territory and regions straddling several national borders or jurisdictions.

Recommendations to Address Military Capability and Authorities Gaps

Allowing Department of Defense assets to *advise* partner nation planning process for dual-use forces can help ensure and reinforce partner nation processes for mission analysis, concept development, risk assessment (risk to force, mission, and civilians), intelligence gaps, decision points, proportionality, and rules on use of force. Advising partner nation dual-use forces during tactical actions⁵⁷ allows for real time

feedback during tactical execution and could enhance unit effectiveness and operational results. Expanding authorities to *assist* partner nation employment of dual-use forces could allow Department of Defense assets to provide intelligence directly to partner nation dual-use forces conducting the mission or real time intelligence and surveillance updates to a United States law enforcement liaisons directly supporting the mission. Expanded advise and assist activities would also open the aperture for the judicious use of special operations assets to evaluate local situations, report rapidly, work directly with partner state dual use forces and civilian authorities, organize local citizens to help resolve local issues, and deploy with a less significant footprint than some law enforcement agencies or general purpose forces.

The expanded advise and assist authority would apply to activities with United States law enforcement activities in the lead and with vetted⁵⁸ partner nation dual-use units in countries where the confluence (or potential confluence) of illicit trafficking and violent extremism has increased in recent years. The partner nation dual-use forces would be those who routinely participate in counterdrug operations, internal defense, counter terrorism, border security, maritime security and aerial domain awareness activities. In addition to tactical proficiency the expanded authorities allow Department of Defense elements to monitor other key components of legitimacy, effectiveness, and rule of law.

Conclusion

The threat of conventional military action against United States enduring interests from recognized state actors has diminished globally. However, the asymmetric threat to United States national security and to a more generally stable international order posed by a TOC/VEO convergence remains a genuine possibility. Lucrative profits

continue to make it possible for TCN to enhance their operational capability and build capacity faster than many of our regional partner state's security sectors and judicial systems are able to adapt. There are indications that VEN are learning to leverage TCN structures for illicit trafficking and finance. This can enable movement along the terror-crime interaction spectrum, eventually expand, and deepen the convergence between TCO and VEO. Although ideology and goals remain generally distinct between the two, there is no indication that this will remain so. As vulnerable partner states address their own interests, the United States must continue to pursue policies that recognize the primacy of diplomacy and economic statecraft in persuading partners of our mutual interests, but also the efficacy of a coordinated approach with the United States.

Strategically the United States must determine how to address the risk caused by the imbalance between its goals or ends within the TCO portfolio and its ways and means. The current lack of effectual implementation guidance and associated authorities to support espoused national strategic continue to create a significant imbalance in relation to ways and ends. Similarly, our fiscal inability to make relatively small investments now in coordinated whole of government action that leverages existing capacity may create a significant imbalance in relation to means and ways later. This may eventually cause the United States even greater fiscal imbalance as small regional issues potentially transform into larger and more complex threats closer to the homeland. Rather than encourage the notion that defense, diplomacy, and development are coequal or can be synchronized to common effect the United States should engage its domestic audience and partners alike in a hard dialogue about "priorities, requirements, tradeoffs, and limitations."⁵⁹

Endnotes

¹ For purposes of this analysis “globalism” refers to those entities that become international or start operating at the international level, or cause something, especially a business, company, network, or enterprise to become international in a way that both accentuates and leverages their interdependence with other international entities.

² Douglas M. Fraser, *Posture Statement of General Douglas M. Fraser, United States Air Force Commander, United States Southern Command*, Posture Statement presented to the 112th Cong., 2nd sess. (Miami, FL: United States Southern Command, 2012), 4.

³ Ibid.

⁴ Barack H. Obama, *National Security Strategy* (Washington, DC: The White House, May 2010), 49.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Barack H. Obama, *Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security* (Washington, DC: The White House, July 2011), 5.

⁹ Ibid.

¹⁰ Ibid., 1.

¹¹ Ibid., 5.

¹² From JP 3-22; Security Cooperation is all Department of Defense interactions with foreign defense establishments to build defense relationships that promote specific US security interests, develop allied and friendly military capabilities for self-defense and multinational operations, and provide U.S. forces with peacetime and contingency access to a host nation.

¹³ From JP 3-22; Security Force Assistance (SFA) are those Department of Defense activities that contribute to unified action by the U.S. Government to support the development of the capacity and capability of foreign security forces and their supporting institutions.

¹⁴ From JP 3-22; Security Assistance are those programs authorized by the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended, or other related statutes by which the United States provides defense articles, military training, and other defense-related services, by grant, loan, credit, or cash sales *in furtherance of national policies and objectives*. Security assistance is an element of security cooperation funded and authorized by Department of State to be administered by Department of Defense/Defense Security Cooperation Agency.

¹⁵ U.S. Joint Chiefs of Staff, *Joint Operational Planning*, Joint Publication 5 (Washington, DC: U.S. Joint Chiefs of Staff, August 11, 2011), III-42.

¹⁶ The term “dual-use forces” is used to describe those partner nation military, paramilitary, or law enforcement formations that have an internal law enforcement mission as well as a counter terrorism mission or special forces-type military mission.

¹⁷ This definition is derived and paraphrased from, Barack H. Obama, *Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security* (Washington, DC: The White House, July 2011).

¹⁸ Obama, *National Security Strategy*, 49.

¹⁹ Susan C. Bourque and Kay B. Warren, "Democracy without Peace: The Cultural Politics of Terror in Peru." *Latin American Research Review* 24, no. 1 (1989): 7-34.
<http://www.jstor.org.ezproxy.usawcpubs.org/stable/2503279> (accessed March 1, 2013)

²⁰ Louise I. Shelley et al., *Methods and Motives: Exploring Links between Transnational Organized Crime & International Terrorism* (Washington, DC: Department of Justice, June 23, 2005), 34.

²¹ Ibid., 34-35.

²² Ibid., 35.

²³ Louise I. Shelley, “Unraveling the New Criminal Nexus,” *Georgetown Journal of International Affairs* 6, no. 1 (Winter 2005): 5-13, in ProQuest) (accessed March 1, 2013).

²⁴ Ibid.

²⁵ Shelley, “Methods and Motives”, 36

²⁶ Ibid., 37.

²⁷ Ibid., 37.

²⁸ Ibid., 38.

²⁹ Derek S. Reveron, “Weak States and Security Assistance,” *Prism* 1, no. 3 (2010), 29,
http://www.ndu.edu/press/lib/images/prism1-3/Prism_27-42_Reveron.pdf (accessed March 1, 2013).

³⁰ Shelley, “Unraveling the new criminal nexus,” 5-13.

³¹ Shelley, “Methods and Motives,” 41.

³² Ibid.

³³ Ibid., 43.

³⁴ George W. Bush, *The National Security Strategy of the United States of America* (Washington, DC: The White House, September 2002), 1.

³⁵ Pauline H. Baker, "Forging a U.S. Policy Toward Fragile States," *Prism* 1, no. 2 (2010) 73, http://www.ndu.edu/press/lib/images/prism1-2/5_Prism_69-84_Baker.pdf (accessed March 1, 2013)

³⁶ Obama, *National Security Strategy*, 9.

³⁷ *Ibid.*, 17.

³⁸ *Ibid.*, 40.

³⁹ This is the author's policy extrapolation from the National Security Strategy.

⁴⁰ Obama, *Strategy to Combat Transnational Organized Crime*, 1.

⁴¹ U.S. Constitution, art. 2, sec. 2 & 3.

⁴² *Ibid.*, art. 1, sec. 8.

⁴³ This is exclusive of the National Guard when operating under the authority of Title 32 USC.

⁴⁴ Title 18 USC, Section 1385.

⁴⁵ Section 1004, National Defense Authorization Act for Fiscal Year 1991 authorizes United States military training of partner state law enforcement agencies for both counter terrorism and CN/CIT missions. Section 1031, National Defense Authorization Act for Fiscal Year 1997 authorized the Department of Defense to provide the Government of Mexico with specific types of CN/CIT support. Section 1033, National Defense Authorization Act for Fiscal Year 1998 authorized the Department of Defense to expand CN/CIT support described in the 1991 National Defense Authorization Act (section 1004) to Colombia and Peru. Section 1021 for the National Defense Authorization Act for Fiscal Year 2004 authorized the Department of Defense to expand CN/CIT support described in the 1991 National Defense Authorization Act (section 1004) to Afghanistan, Bolivia, Ecuador, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. Section 1022 for the National Defense Authorization Act for Fiscal Year 2004 authorized duly constituted joint task force(s) of the Department of Defense that provide support to law enforcement agencies conducting counternarcotics activities may also provide (with some restrictions) support to law enforcement agencies conducting counter-terrorism activities within the geographic area of responsibility of that task force. Section 1021, National Defense Authorization Act for Fiscal Year 2005 authorizes the use of funds for a unified counterdrug and counterterrorism campaign in Colombia (plan Colombia). Section 1011, National Defense Authorization Act for Fiscal Year 2013 extends thru the end of fiscal year 2013 the authority for an officially authorized and constituted joint task force of the Department of Defense to support law enforcement agencies in countering transnational crime. Specifically it authorizes support to law enforcement agencies conducting counter-drug activities" and "subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities. However, the authorization limits military support to the prescribed geographic area of responsibility of the joint task force and does not address the convergence of crime and violent extremism.

⁴⁶ Reveron, "Weak States and Security Assistance," 29.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., 31.

⁵⁰ Named operation based on an executive finding.

⁵¹ Named operation based on an executive finding.

⁵² Named operation based on a legislative authority.

⁵³ As of February 1, 2013

⁵⁴ To include dual-use forces.

⁵⁵ Arrest, apprehension, search, and seizure.

⁵⁶ Grant authority to reprogram money and reallocate resources amongst the departments of the executive branch as required by the portfolio.

⁵⁷ Not actually accompanying partner nation forces or physically participating in kinetic operations.

⁵⁸ Primarily in terms of human rights.

⁵⁹ Ethan B. Kapstein, Do Three Ds Make an F? The Limits of "Defense, Diplomacy, and Development," *Prism* 1, no. 3 (2010), 22, http://www.ndu.edu/press/lib/images/prism1-3/Prism_21-26_Kapstein.pdf (accessed March 1, 2013)

